In the High Court of Uttaranchal, at Nainital.

S.A. No. 100/2001

(Old No. 880/1976)

State of U.P. through the Conservator of Forests Kumaon Circle, Nainital ... Appellant.

Vs.

1- Pooran Chandra Joshi

2- Madan Mohan Joshi,

3- Tika Ram alias Tribhuvan Joshi

4- Girish Chandra Joshi

All sons of Chandra Ballabh Joshi

5- Smt. Prabha Devi W/o Devadhar

Professor Poona College, Poona

D/o M.C. V. Joshi,

6-Km. Daya Devi D/o M.C.V. Joshi,

7-Gayanandra Chandra Joshi

8-Vipin Chandra Joshi,

9-Dinesh Chandra Joshi,

10- Ramesh Chandra Joshi

Sons of M.B. Ballabh Joshi,

11- Smt. Radhika Devi W/o M.B. Ballabh Joshi

12- Smt. Kamla Devi,

13- Smt. Prabha Devi W/o Ram Dutt Tewari

R/o Mohalla Tharpala, Almora,

D/o M.B. Ballabh Joshi.

14- Km. Shashti Devi D/o M.B. Ballabh Joshi,

15- Km. Nandi Devi D/o M. B. Ballabh Joshi, R/o Chhatar State Patti Varora, P.O. Chanauda, District Almora .....Respondents.

Sri Nand Prasad, learned Standing counsel for the appellant.
Sri M.C. Pande, and Sri Siddartha Shah, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This Second appeal has been filed by the plaintiff/ appellant, State of U.P. through Conservator

of Forests, Kumaon Circle, Nainital, against the judgment and order dated 9-12-1975, passed by Ist Additional District Judge, Kumaon in F.A. No. 203 of 1966, State Vs. Puran Chand Joshi and others, arising out of Original Suit No 2 of 1964-(A), State of U.P. Vs. Puran Chand Joshi and others.

2. The undisputed case of the parties was that the Secretary of State for India in Council by deed dated 19-7-1869 (Ext A1) transferred 660 acres 2 roods and 34 poles of land in villages Timlee Bohunpore and Dumlote of District Almora in favour of Murray brothers and the property came to be known by the name of 'Dumlote Estate'. In due course Nash brothers who had acquired title to the property transferred 100 acres area of the said Estate to Sri Pervis by sale-deed dated 10-4-1910 (Ext. A-2). The land was shown in a map (Ext.A-3) forming part of the sale-deed. Pervis in his turn transferred 2266. 1/16 Nali land describing the same to be plot No. 248/1 of the settlement of 1923 by sale-deed dated 7-11-1928 (Ext. A-4) to Mr. Frey and on his death Smt. Frey transferred 2116 Nali land by sale-deed dated 27-3 -1947 (Ext.5) in favour of Chandra Ballabh Joshi, father of defendants/respondents 1 to 6.

3- The plaintiff/appellant's case was that in 1919 the Central Government acquired 156.1/10 acres land for Rs. 20,263/- from the land belonging to Nash brothers for settlement of soldiers. This land came to be known by the name of 'Kumaon Soldiers Settlement' and in 1929 a part of the said settlement was transferred to the U.P. Government Forest Department and a map showing the land with pillars was prepared by the Divisional Forest Officer. By Notification dated

29-10- 1931 a Reserve Forest of about 684 acres was created within villages Kaushani and Dumlote and the boundary pillars were erected on the spot as given in the notification side by side with the Dumlote Estate Pillars which had come into existence in 1923 as a result of survey followed by the necessary map and Muntakhib. Forest boundary pillars Nos. 82, 83 and 84 could not be repaired during 1947-49 and the father of defendant sometime from 1949 began to encroach upon the Reserve Forest area and ultimately took illegal possession over the land in suit. The survey operation in the District started in 1958 in which the disputed land was wrongly shown by the Amin as falling within the portion of the land purchased by the father of the defendants/respondents 1 to 6 and this sparked of civil and criminal litigation in which the Assistant Record Officer directed the plaintiff/appellant to file a suit for declaration of title and hence the suit was filed on 19-12-1963. The name of Budhi Ballabh Joshi was said to have been recorded in the paper jointly with Chandra Ballabh Joshi and hence the sons, wife and daughters of Budhi Ballabh Joshi were also made parties who are defendants/respondents No. 7 to 15.

4- The defendant/respondents filed a joint written statement alleging that the land in suit was never in possession of the Forest Department; that the land acquisition proceedings and the government were not binding on the defendants/respondents; that the demarcation confirmed by the Divisional Commissioner in favour of the defendant was not liable to be challenged; that the alleged survey and Muntakhib of 1923 were not admitted as correct or binding; that the correctness of the plot number and the area was also

not admitted; that the map forming part of the plaint was not correct and that the plaintiff/appellant was not the owner of the disputed land.

5- The learned Civil Judge held that the land of 'Dumlote Estate' goes up ravine 'EFA' as marked in the map Ext. 14 and that being so the land in dispute lies within the boundary of the defendant/respondents' estate and it could not be held to be the part for the reserve forest. It was also held that it was quite possible that the disputed land might be the part of the land retained by Nash brothers and the plaintiff/appellant has failed to prove its title to the land and in any case it could not be held to be the owner. On the point of limitation it was also held that the suit was not barred by limitation. With the aforesaid findings the suit was dismissed with costs, vide judgment and decree dated 23-4-1966.

6- Feeling aggrieved by the aforesaid judgment and order, first appeal was filed before the court of District and Sessions Judge, Kumaon, which was transferred to the Ist Additional District Judge, Kumaon, who after hearing learned counsel for the parties and perusing the entire material on record, was pleased to dismiss the appeal vide impugned judgment and order dated 9-12-1975.

7- The plaintiff/appellants have thereafter preferred this second appeal before the Allahabad High Court, which has been transferred to this court after creation of the new State.

8- At the time of the admission of the second appeal, the following substantial questions of law were formulated by the Court:-

1- Whether in view of the provisions contained in U.P. Act No. 22 of 1972, the learned Addl. District Judge did not have jurisdiction to decide the Appeal and the appeal stood transferred to the Prescribed Authority under sub section (2) of Section 20 of the Act?.

2- Whether the aforesaid remand is open to the appellant in the present second appeal in view of the fact that the appellant submitted to the jurisdiction of the learned Additional District Judge, as did not raise any such objection, when the appeal was pending before him?.

3- What is the bearing, if any, of sub-section (2) of Section 20 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act on the present second appeal?.

9- Heard learned counsel for the parties sand perused the record.

10- The record reveals that a case was instituted in the year 1960 between the State Government and father of the respondents 1 to 4 and in that case the judgment was delivered on 31-7-1961. That case was dismissed and the Forest Department was directed in that case to file a civil suit for declaration of the title of the State, if it so desires. The authority who decided the matter has also observed in the judgment that the matter has also observed in the judgment that there is nothing to show that the land in question is in possession of the Forest Department and the entries

with regard to the possession are in favour of the defendants/respondents.

11- The record further reveals that the State Government through Conservator of Forest filed a suit in the year 1963, which was registered as O.S. No. 2 of 1964 and in that suit the State Government sought the relief for declaration of the title, as well as decree for possession over the land in question. Therefore, the aforesaid facts itself indicate that the Government or the Forest Department had never been in possession over the land in question and it was the reason that the Forest Department had to seek the relief of declaration as well as possession over the land in suit. The aforesaid circumstance also indicates that the regular suit for ejectment and declaration was field by the appellant.

12- For consideration of the substantial question of law No. 1, framed in the second appeal, it will again be essential to read Section 20(2) of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, (hereafter referred to as 'the Act') which reads as follows:

"Notwithstanding any judgment, decree or order of any Court or authority, and notwithstanding anything contained in Section 15 or Section 19, any suit or other proceeding for any of the reliefs mentioned in Section 15 instituted in any Court or initiated or purported to be initiated by any authority under a repealed enactment before the commencement of this Act and pending at the commencement of the Uttar Pradesh Public Land and Premises Laws (Amendment and Validation) Act, 1970 (hereafter in this section referred to as the 1970 Act), either in the

Court of first instance or in any Court of appeal or revision or before such authority, shall stand transferred to the prescribed authority, and the prescribed authority shall thereupon dispose of the same as proceeding under the relevant provision of this Act, and in any proceeding,-

(a) the prescribed authority may proceed further from the stage from which the suit or proceeding is transferred, and may for that purpose treat any summons or notice issued, written statement or reply filed or evidence adduced in such suit or proceeding before the transfer, as notice issued by itself, or, as the case may be, cause shown or evidence adduced before itself, under the relevant provision of this Act.;

(b) any objection referred to the District Judge under Section 10 of the Uttar Pradesh Government Premises (Rent, Recovery and Eviction) act, 1952 or before the Civil Judge under Section 7 of the Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1950, before those sections were repealed by the 1970 Act shall be decided by the prescribed authority itself, and any reference, suit or appeal under the said sections shall abate:

Provided that where any such reference suit or appeal has been decided before the coming into force of this Act the prescribed authority shall act according to such decision, which, subject to the provisions of section 9, shall be deemed to be final."

13- A bare perusal of the aforesaid provision, it is quite clear that the proceedings under U.P. Public Land and Premises Laws, shall stand transferred to the

prescribed authority. Therefore, it is an essential ingredient that the land in question should be a public premises. In the instant case there is nothing on record, which may suggest that the land in question has ever been considered to be the land of either State Government or Forest Department. I am , therefore, of the view that the provisions of section 20(2) of 'the Act' have no application in this case.

14- The courts below have recorded the categorical finding that the witnesses of the plaintiff/appellant have admitted in their depositions that they never saw the gazette notification and relevant facts relating to the acquisition of the land by the Government. The witness, P.W.3, Hem Chandra Singh, of the plaintiff/appellant has also deposed that he does not know whether the land in dispute before the notification belonged to the Government. Therefore, the plaintiff/appellant could not establish before the courts below as to how the land in dispute was acquired by the Government. Both the courts below have thus recorded concurrent finding that it was not possible to hold that the plaintiff/appellant is the owner of the land in question. The courts below have also held that the plaintiff/appellant failed to prove its title to the land in question. Hence, it cannot be held that the plaintiff/appellant is the owner thereof.

15- As I have already observed that the provisions of Section 20 (2) of 'the Act' have no application to the facts and circumstances of the present case, therefore, the substantial question of law No. 1 is answered against the plaintiff/appellant.

16- As far as the substantial question of law Nos. 2 and 3 are concerned, once it is observed that the provisions of Section 20(2) of 'the Act' have got no application in the instant case, therefore, these questions are also answered against the plaintiff/appellant.

17- Perusal of the judgments and decrees passed by both the courts below, show that all the factual aspects of the case, have been considered by them and the concurrent finding of fact has been recorded by the courts below. I, therefore, don't think it just and proper to interfere with the finding of fact, recorded by both the courts below, howsoever erroneous, it may be.

18- On the basis of the assessment of evidence on record, I come to the conclusion that this appeal does not bear any force and is liable to be dismissed.

19- Accordingly the appeal is dismissed. No order as to cost.

(B.C. Kandpal, J)

Dated: September 8 , 2006.
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